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<b>B.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0872</b>
	)	<b>Issued: December 8, 2021</b>
<b>U.S. POSTAL SERVICE, CLEVELAND</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Cleveland, OH, Employer</b>	)	
	)	

### Case Submitted on the Record

## DECISION AND ORDER

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 21, 2021 appellant filed a timely appeal from a March 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 17, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 30, 2020 employment incident.

## **FACTUAL HISTORY**

On July 25, 2020 appellant, then a 50-year-old supervisor of distribution operations, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2020 she injured her feet, legs, hips, wrists, left shoulder, and back when pushing equipment, moving mail racks and lifting trays while in the performance of duty. She did not immediately stop work.

In an undated statement, appellant indicated that her facility experienced an employee shortage and she would step in and move racks from one machine to another. On April 30, 2020 she reported severe foot pain radiating upwards that affected her ability to walk.

Appellant was treated by Schirron Campbell, a physician assistant, on June 26, 2020 for low back pain radiating into her feet. Ms. Campbell reported that appellant underwent a left acetabulofemoral joint and left greater trochanteric bursa injection on June 19, 2020 with complete pain resolution. She diagnosed strain of the lumbar region, lumbar radiculopathy, and bilateral plantar fasciitis.

On August 11, 2020 appellant underwent a functional capacity evaluation that revealed she could work in the sedentary physical demand category. It noted significant observational and evidence-based inconsistencies resulting in self-limiting behavior and submaximal effort.

In a report dated August 27, 2020, Dr. Timothy J. Nice, a Board-certified orthopedist, treated appellant noting that she worked at the employing establishment for over 20 years starting out as a mail carrier and became a supervisor in 2014. He noted x-rays of the lumbar spine revealed increased lumbosacral angle, mild disc disease, mild foraminal disease, and facet disease and opined that carrying a mailbag “could” aggravate these conditions. Dr. Nice indicated that x-rays of the left hip revealed early degenerative changes. He noted findings of paresthesias in appellant’s feet and a negative neurologic examination in the upper and lower extremities. Dr. Nice further noted that appellant was diabetic with diabetic neuropathy. He noted weakly positive Tinel’s sign on the left and over the left ulnar nerve and recommended further diagnostic studies.

In a September 15, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received additional evidence. Appellant was treated by Deborah Dicks, a nurse practitioner, on August 20, 2020 for depression and anxiety.

In duty status reports (Form CA-17) dated August 27, September 24, and October 21, 2020, Dr. Nice noted clinical findings of left-side injury and responded, “Yes” that the diagnosis was due to injury. He noted that appellant could not return to work.

A magnetic resonance imaging (MRI) scan of the left hip dated September 9, 2020 demonstrated mild post-stress changes involving the anterosuperior aspect of the left femoral head and mild left-sided greater trochanteric bursitis.

Appellant underwent an electromyogram (EMG) and nerve conduction velocity (NCV) study on September 10, 2020 that did not reveal distinctive evidence for lumbosacral motor radiculopathy. An EMG/NCV study of the upper extremities dated September 17, 2020 revealed bilateral median neuropathy, at or distal to the wrist, left ulnar mononeuropathy, at or distal to the elbow segment, and possible early neuropathy at the elbow.

Dr. Nice evaluated appellant on September 24, 2020 and indicated that she sustained an injury in April when she was pushing heavy equipment and experienced symptoms in her left groin and trochanter of the left hip. He opined that pushing equipment aggravated the underlying degenerative condition in her left hip and trochanteric bursitis. Dr. Nice noted that appellant had increased lumbosacral angle that predisposed her to facet symptoms in her back and when she carried a mailbag she became symptomatic. He further diagnosed bilateral pes planus and possible early stage of diabetic neuropathy in her feet.

By decision dated October 26, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and the accepted April 30, 2020 employment incident.

OWCP received additional evidence. On May 8, 2018 appellant was treated by Dr. Stella Chiunda, a podiatrist, for left ankle pain. She reported a remote ankle sprain in the late 1990's and an MRI scan revealed panos longus and brevis. Dr. Chiunda diagnosed sinus tarsitis secondary to abnormal pronation, history of peroneal tendon tear, and diabetes well controlled without pedal vasculopathy or neuropathy.

On April 24, 2019 Dr. Jianguo Cheng, a Board-certified anesthesiologist, evaluated appellant for low back and left leg pain that started five years prior, but worsened over the past year without any inciting event. Appellant noted radiating low back pain into the left groin with numbness in the left leg down the calf. He reported findings of tenderness to palpation at the left S1 joint and antalgic gait. Dr. Cheng diagnosed primary osteoarthritis of the left hip, trochanteric bursitis of the left hip, and radiculopathy of the lumbar region.

In a July 5, 2019 report, Dr. Deepak Agarwal, a Board-certified anesthesiologist, performed left L4 diagnostic and therapeutic transforaminal epidural steroid injection. He diagnosed lumbar radiculopathy.

On October 2, 2019 Dr. Cheng treated appellant in follow up after her first transforaminal lumbar epidural steroid injection and appellant reported improvement for one month, but her symptoms gradually returned. He diagnosed radiculopathy of the lumbar region and recommended a second steroid injection. On May 27, 2020 Dr. Cheng evaluated appellant for left hip pain. Appellant noted persistent pain localizing to the left and right hip that radiates down the lateral leg to the left and right knee. Dr. Cheng diagnosed primary osteoarthritis of the left hip and greater trochanteric bursitis of the left hip and recommended a left acetabulofemoral joint injection and left greater trochanteric bursa injection.

On May 2, 2019 appellant was treated by Anthony Ciavarella, a physician assistant, for carpal tunnel syndrome. Mr. Ciavarella diagnosed bilateral carpal tunnel syndrome and recommended wrist splints and left carpal tunnel injection.

On January 28, 2020 Janel Frilling, a nurse practitioner, treated appellant for leg pain. She diagnosed lumbar radiculopathy and chronic pain of both knees. Ms. Frilling noted both conditions were chronic and recurring.

Dr. Nice treated appellant on October 22, 2020 and noted findings of mild bilateral median neuropathies in both upper extremities, severe left ulnar neuropathy with paresthesias into the small finger, positive Tinel's sign at the elbow, and spondylitic changes in her low back. He noted appellant worked 24 years at the employing establishment. Dr. Nice recommended altered work activities and night splints. In a letter dated November 12, 2020, he summarized the findings in his reports dated August 27 and September 24, 2020. Dr. Nice indicated that appellant's initial injury occurred in February 2019 when she was working as a supervisor that required prolonged walking and developed pain in her left upper leg. X-rays revealed mild degenerative changes in the left hip. Dr. Nice indicated that on April 30, 2020 appellant reported pushing and pulling equipment and experienced left groin pain. He treated her on June 19, 2020 and she reported pain over the trochanteric bursal area of her left hip. Dr. Nice noted tenderness over the greater trochanter of her left buttock that was aggravated by moving and twisting her left leg as well as the arthritic condition in the hip socket. He indicated that appellant did not need any further treatment for her left hip or bursitis. In Form CA-17 reports dated November 12, 2020 and January 14, 2021, Dr. Nice noted clinical findings of left-sided injury and responded "Yes" that the diagnosis was due to injury. He noted that appellant could not return to work.

An x-ray of the left shoulder dated November 24, 2020 revealed mild glenohumeral and acromioclavicular (AC) osteoarthritis.

In a note dated December 10, 2020, Dr. Nice reported appellant's continued loss of internal and external rotation of the left hip. He diagnosed degenerative joint disease in the left hip. On January 14, 2021 Dr. Nice indicated that appellant had multiple injuries in the 24 years that she worked for the employing establishment. He reported that in August 1996 she was carrying mail and fell off a porch and ruptured peroneal tendons of the left ankle; in 2005, while working as a clerk, she was hit in the head and sustained a head and neck injury; in 2009 she was struck in the left buttock and hip with a mail container and developed left hip arthritis; and also in 2009 while delivering mail she slipped and fell twisting her right ankle. Dr. Nice began treating appellant in 2020 after she was pushing and pulling carts of mail and felt severe pain and popping sensation in her left groin. He opined that appellant aggravated a preexisting degenerative changes in the left hip. Dr. Nice noted an EMG/NCV study confirmed ulnar neuropathy and bilateral carpal tunnel syndrome that he opined was common among employing establishment employees who have worked long term as clerks, mail carriers, and handlers. He noted that as a supervisor, appellant was required to stand on concrete and do a lot of walking and he recommended more sedentary work.

On January 21, 2021 appellant, through counsel, requested reconsideration.

In a February 25, 2021 report, Dr. Nice sought to correct and clarify statements made in his January 14, 2021 report. He noted that in 2009 appellant sustained three injuries. Dr. Nice noted that appellant was struck in the left buttock by a nutting truck and fell to the ground injuring

her left leg. In August 2009 appellant tripped on carpeting descending stairs and sprained her right ankle. In December 2009 while working as a carrier delivering mail she slipped on ice and fell onto her back and buttock. Dr. Nice noted that since the last injury appellant experienced worsening symptoms in the left hip despite conservative care and was diagnosed with early degenerative arthritis. Appellant underwent left lateral hip and left groin injections with only temporary relief in symptoms. X-rays confirmed that she had arthritic changes in her left hip, loss of internal and external rotation, and degenerative changes. Dr. Nice recommended guarded activities, pain medicine, anti-inflammatories, and a cane. He concluded that appellant had a progression of left hip pain commencing with the injury in December 2009.

By decision dated March 17, 2021, OWCP denied modification of the October 26, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted April 30, 2020 employment incident.

Dr. Nice treated appellant on August 27, 2020 for mild disc disease, mild foraminal disease, facet disease, and early degenerative changes and opined that carrying a mailbag could aggravate this condition. The Board has held that medical opinions that suggest that a condition “could” be caused by work activities are speculative or equivocal in character and have limited probative value.<sup>11</sup> Accordingly, this report is insufficient to establish causal relationship.

On September 24 and November 12, 2020 Dr. Nice evaluated appellant for symptoms in her left groin and trochanter of the left hip and buttock after a work injury on April 30, 2020 when she was pushing and pulling equipment. He opined that appellant’s underlying degenerative condition in her left hip and trochanteric bursitis was aggravated by moving and twisting her left leg. Similarly, on January 14, 2021, Dr. Nice indicated that appellant sustained multiple injuries in the 24 years of working at the employing establishment to the left ankle, head, neck, left buttock, hip, and right ankle and opined that the 2020 incident pushing and pulling carts of mail aggravated the preexisting conditions. The Board has held that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.<sup>12</sup> As such, these medical notes by Dr. Nice that do not offer a rationalized medical opinion explaining causal relationship and are insufficient to establish appellant’s claim.

In Form CA-17 reports dated August 27, September 24, October 21, November 12, 2020 and January 14, 2021, Dr. Nice noted clinical findings of left-sided injury and responded “Yes” that the diagnosis was due to injury. However, as he did not provide adequate medical rationale relating a diagnosed medical condition to the accepted April 30, 2020 employment incident, these reports are of diminished probative value and, therefore, are insufficient to establish appellant’s claim.<sup>13</sup>

On May 27, 2020 Dr. Cheng evaluated appellant for left hip pain and diagnosed primary osteoarthritis of the left hip and greater trochanteric bursitis of the left hip. In a report dated October 22, 2020, he treated appellant for mild bilateral median neuropathies in both upper extremities, severe left ulnar neuropathy with paresthesias into the small finger, and spondylitic changes in her low back. Similarly, on December 10, 2020, Dr. Nice reported appellant’s continued loss of internal and external rotation of the left hip and diagnosed degenerative joint

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<sup>10</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>12</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020).

<sup>13</sup> *L.S.*, Docket No. 20-0570 (issued December 15, 2020); *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

disease in the left hip. Likewise, in a February 25, 2021 report, Dr. Nice noted that since 2009 appellant experienced worsening symptoms in the left hip and was diagnosed with early degenerative arthritis of the left hip, loss of internal and external rotation, and degenerative changes. However, he did not specifically relate the diagnosed conditions to the accepted April 30, 2020 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition or disability is of no probative value on the issue of causal relationship.<sup>14</sup> Therefore, the Board finds that these reports are insufficient to establish appellant's burden of proof.

Other reports from Dr. Chiunda dated May 8, 2018, Dr. Cheng dated April 24, October 2, 2019, and Dr. Agarwal dated July 5, 2019 are of no value in establishing the claimed conditions since they predate the time of the claimed condition of April 30, 2020. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.<sup>15</sup>

In support of her claim, appellant submitted reports from a nurse practitioner and physician assistants. However, certain healthcare providers such as nurse practitioners,<sup>16</sup> and physician assistants<sup>17</sup> are not considered "physician[s]" as defined under FECA.<sup>18</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>19</sup>

Appellant submitted multiple diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>20</sup>

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed medical conditions and the accepted April 30, 2020 employment incident, the Board finds that appellant has not met her burden of proof.

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<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *C.W.*, Docket No. 19-1555 (issued February 24, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

<sup>16</sup> *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

<sup>17</sup> *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

<sup>18</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioner).

<sup>19</sup> *Id.*

<sup>20</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has met not her burden of proof to establish a medical condition causally related to the accepted April 30, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board